

## Transitioning the Family Farm

### Michael J. Prsa and Chris Markou

Jim Smith, a widower, has operated a farming business since he bought his farm property in 1975 for \$200,000. He has three adult sons who help him with the farming operation; one or more of them may wish to continue a farming operation in the future. In his Will, Jim has named his three sons as equal beneficiaries of his estate. The current value of the property is about \$4.2 million. Some developers have approached him about selling the farm. He does not know what he should do.



A family farm is both a home and a business. This complicates the transfer of property, which is complicated enough. There are many planning concerns for a farm family, not least of which is ensuring that they get specialized legal advice.

### Some Legal Considerations

- Should Jim keep the farm in his name or should he add his sons as co-owners? If adding the sons as co-owners, should they receive the property by gift or should they pay for their interest?
- Does he want the sons to own the land, the farming business, or both?
- Should Jim transfer the property while he is alive or on his death?
- If he includes the sons as owners, should they have a co-ownership agreement in which they spell out what will happen in the future and who will make decisions in the event of disagreement?
- Should they have a partnership agreement or should they incorporate?
- Do any of the sons owe money or have problems managing money? Are any of them going through marital difficulties?
- What will be the family law implications to the sons?
- Is Jim's Will up to date and are its provisions consistent with his plan? Who is the executor?
- What if Jim loses capacity to make decisions and can't live on the farm anymore?

### Tax Considerations

What would be the income tax implications to Jim if he sold the farm to a developer? If the farm is a "Qualifying Farm Property" within the provisions of the Income Tax Act, Jim may be entitled to an \$800,000 capital gain exemption. If certain requirements are met, it may be possible to multiply this exemption amongst several owners. Jim may also be able to claim a Principal Residence exemption for a portion of the property that includes the home.

What would be the tax consequences if Jim transferred the property to his sons and remained a co-owner? Under certain conditions, it may be possible to transfer the farm to his sons with no immediate tax consequences and without paying land transfer tax. Jim should also consider how to minimize probate tax that may have to be paid if he retains an ownership interest in the property at his death. In this example, the probate tax could be over \$60,000. If the farm is not sold at Jim's death, how will the estate pay the tax owing?

Obviously, the answers to these questions will differ from family to family. One constant, however, is the need for specialized legal advice.

This year Lawrences is celebrating 90 years in business. We have been providing advice to farmers from the beginning. Our Estates and Real Estate lawyers have worked with many farming families and their advisors to help each family work through these types of questions and tailor a plan that meets the family's specific objectives.



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## FRANCHISE LAW PART 2

# What is a Franchise Disclosure Document?

### Louis Vouloukos

In Part 1 of this series on franchise law, we described Mr. and Mrs. Singh's diner that offers customizable, affordable, healthy food in a trendy setting. The Singhs have now successfully tested their concept at several locations, registered a trade-mark, and incorporated a company ("SHD Inc."), of which they are both directors. They now want to franchise their business and have been told they need a disclosure document.

### What is a Disclosure Document?

In Ontario, the *Arthur Wishart Act* (the "Act") requires franchisors to give prospective franchisees a disclosure document—a significant amount of written, pre-sale information about the franchisor and its system. Disclosure documents often run well over 100 pages. If they turn out to be deficient (more about that in the next article), the franchisor and others face serious repercussions. Franchise laws are unique, complicated and fraught with danger for those unfamiliar with the requirements of the Act, or how courts have interpreted it.

### What Must a Disclosure Document Contain?

In Ontario, a disclosure document must be accurate, clear and concise, and contain:

- copies of all proposed franchise agreements and other agreements relating to the franchise.
- financial statements as prescribed in the regulation made under the Act.
- all material facts, including facts as prescribed in the regulation.
- prescribed statements to assist a prospective franchisee to make an informed investment decision.
- other information and copies of documents as prescribed.
- signature(s) of a director or officer.

A "material fact" is any information about the business operations, capital and control of the franchisor or the franchise system that would reasonably be expected to have a significant effect on the value or price of the franchise, or the decision to purchase the franchise. Note that the list of material facts set out in the regulation to the Act is not exhaustive. All too often, franchisors do not go beyond the material facts listed in the regulation when preparing disclosure documents and may end up omitting something of importance.



The disclosure document must be delivered to the franchisee at least 14 days before the franchisee signs any agreement relating to the franchise or the payment of any moneys to the franchisor. Also, you cannot provide information to a prospective franchisee in piecemeal fashion: the disclosure document must be one document, delivered at one time.

### Why Should We Care?

If SHD Inc. does not comply with the Act's disclosure requirements, or if it discloses information that turns out to be untrue or misleading, it faces serious legal and financial repercussions, including being sued for damages. Further, a franchisee has the right under the Act to rescind (i.e. cancel) the franchise agreement in certain circumstances. If this happens, the franchisor would have to refund to the franchisee *all* monies paid to it, buy back from the franchisee *all* inventory and equipment, and compensate the franchisee for *any* losses incurred in acquiring, setting up, or operating the franchise. Worse yet, any director of the franchisor who signed the disclosure document, such as the Singhs in our example, would be personally accountable to the franchisee, meaning that their personal assets would be at risk.

Given the detailed and technical disclosure requirements of the Act and the risk of serious financial repercussions for the company and its directors personally, the Singhs should consult an experienced franchise lawyer to help them prepare their disclosure document and navigate the complex, often poorly understood, legal aspects of franchise law in Ontario.



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# CHANGES TO LEGISLATION GOVERNING NOT-FOR-PROFITS

## Getting Ready for the ONCA

### Michael J. Luchenski

Do you help to run a not-for-profit corporation, such as a social club, sports team, trade or professional association, cultural or faith group, or charity? Then you should read on, because the legislation governing incorporated not-for-profit groups is changing.

### Federal or Provincial?

The first point to determine is whether your not-for-profit corporation is incorporated under the federal or provincial legislation as the deadlines and related considerations are very different under each jurisdiction. If your not-for-profit corporation operates in more than one province, it is probably incorporated federally, but the jurisdiction of incorporation will be set out in the corporation's letters patent.

Federal not-for-profit corporations are or will be subject to the *Canada Not-For-Profit Corporations Act* (the "CNCA"), which came into force on October 17, 2011. As we mentioned in a previous article (*Lawrences Letter*, Winter 2011), any federally regulated corporation that has not complied with the new CNCA by October 17, 2014 will be dissolved. If it has not already done so, your board should seek legal advice on how to comply with the new CNCA before October 17, 2014.

If your corporation operates only in Ontario, it was probably incorporated under the *Ontario Corporations Act*, which will soon be superseded by the *Ontario Not-For-Profit Corporations Act* (the "ONCA"). The ONCA has been approved by the Ontario legislature, but must be proclaimed into force before it takes effect. Although there will be a three-year period for most existing Ontario corporations to comply with the ONCA, it will immediately begin to apply to every Ontario not-for-profit corporation, in respect of any matter not already addressed by the corporation's existing letters patent and bylaws. This will cause some unintended difficulties for many Ontario not-for-profit corporations.

### Voting Rights

The most potentially disruptive effect of the new legislation concerns the voting rights of members: classes of members currently regarded as non-voting members may gain voting rights under the new ONCA, either generally or as a result of changes affecting that class of members.

For example, many not-for-profit corporations have a class of lifetime or honorary membership which may not have voting rights currently. Under the ONCA, if the corporation wants to change any of the rights



related to that class of membership, it will have to determine who belongs to the class, serve a notice of meeting to pass a resolution to change the rights of that class, determine whether quorum is achieved, and finally, to have the members who are affected pass a resolution to limit their rights. Obviously, it will be much easier to make those changes before the ONCA comes into force.

### Classes of Membership

Another serious issue with the transition to the ONCA concerns identifying the classes of membership in a corporation. Currently, many not-for-profit corporations set out the classes of members in the bylaws. Under the new ONCA, classes of membership must be set out in the articles of the Corporation (currently called its letters patent and supplementary letters patent). Implementation of the new Act may result in there being only one class of members, all with equal rights.

It is important for every not-for-profit corporation governed by the current *Ontario Corporations Act* to review its letters patent, supplementary letters patent and bylaws in contemplation of the coming changes and prepare accordingly. Lawrence's Business Law Group has extensive experience assisting not-for-profit and charitable organizations and can help you determine which changes your organization needs to make.



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## We're Celebrating: Lawrences Turns 90 in 2014!



### Heather M. Picken

In 1924, Brampton had a population of just over 4,500 and was a largely agricultural community. In 2014, it is one of Canada's fastest growing, youngest cities, with a diverse population approaching 550,000, and home to major industries. While all those changes were taking place over the last 90 years, one local law firm was growing and adapting to serve the changing legal needs of Brampton and Peel Region. From its offices in a former tin smithy at the corner of Queen and George Streets, Lawrence, Lawrence, Stevenson LLP has seen Brampton grow from "Flower Town" to multinational meeting place.

The lawyers of Lawrences have played their part in this growth: our founder Harold Lawrence served as Mayor of Brampton from 1949 to 1951 and his partner Gordon Graydon served as the Member of Parliament for Peel from 1935 to 1953. Harold's son Bill and his classmate Basil Stevenson joined the firm in 1957. Over the years, Lawrences lawyers have served on many boards of local organizations, helping to guide the growth of our community.

When Harold Lawrence founded the firm, most lawyers in Brampton were general practitioners, doing a little bit of everything as their clients required. But as Brampton grew, clients began to need more specialized legal services. Bill Lawrence started practice just as developers were flocking to Brampton; thus began Lawrences' Real Estate practice group. Property owners need wills and estate plans, which is how Lawrences' Wills & Estates Group came into being. Businesses need incorporation and advice on corporate contracts, bringing Lawrences Business Law Group into being. And since disputes are a part of business

life, Lawrences has always had an active Litigation Group. On the firm foundation built by Harold Lawrence and his partners, these groups have thrived so that we have been able to extend our services into such areas as Employment, Franchise, and Not-for-Profit/Charities Law.

All of us at Lawrences are proud to be part of a firm that has been part of Brampton for 90 years. While we have adapted to rapid changes, we have held steadfastly to Lawrences' founding principles: excellence in legal work and client service and giving back to the community. More than 50 local organizations have benefited from Lawrences' assistance over the years.

Lawrences' current partners are experienced senior lawyers; most articulated here and were mentored by the great lawyers who helped build our firm. We thank those mentors and all of the associates and staff who have worked with us for their contributions over the years.

Above all, we thank you, our clients and referral sources, for your business and your confidence in us. We look forward to celebrating our 100<sup>th</sup> anniversary with you!



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